

CRIMINAL APPEAL No 337 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

AMBALAL RANCHHODBHAI

Appearance:

PUBLIC PROSECUTOR for Petitioner

SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 26/06/96

ORAL JUDGEMENT

The State has preferred this acquittal appeal against the impugned Order dated 15th January, 1987 passed by the learned Chief Judicial Magistrate, Nadiad in Criminal Case No. 2939 of 1983 whereby he ordered to acquit the respondent-accused for the offence under Section 408 of the Indian Penal Code.

2. The prosecution case of the State, in short, is

that the respondent was serving as Secretary of Dehgam Milk Producers' Society, duly incorporated under the provisions of the Gujarat Co-operative Societies Act, and was looking after the accounts. It is alleged that the respondent being employee of the said Society, had dominion over the cash property of the Society. It was noticed during the audit for the period 1-1-1982 to 3-6-1982 that there were several mistakes and irregularities in the account of the Society. It was the prosecution case that the respondent in the capacity as the Secretary of the Society committed criminal breach of trust and misappropriated sum of Rs. 27,405=58 paise of which he deposited Rs. 1,500=00. The respondent accused thus is alleged to have committed criminal breach of trust and misappropriated remaining amount of Rs. 25,905=58 paise. On complaint being made in this regard, the investigation was initiated and on conclusion thereof, chargesheet for the offence punishable under Section 408 of IPC was submitted against the accused person.

3. The respondent pleaded not guilty to the charge Exh. 12 and claimed to be tried.

4. The learned Chief Judicial Magistrate, Nadiad having recorded evidence of the prosecution witness, on appreciation thereof and considering the other material on record, acquitted the accused for the said offence under Section 408 of IPC vide the aforesaid judgment and order of acquittal.

5. Mr. Bukhari, the learned APP appearing for the Appellant-State has contended that there was sufficient evidence on record to convict the respondent-accused in as much as he has admitted having misappropriated the amount by giving in writing at Exh. 21. He has taken me through the relevant evidence.

6. I have gone through the evidence and other material on record. PW-8 Ramabhai Babarbhai has not supported the prosecution case and he has been declared hostile. No resolution of the society authorizing the respondent for bringing the amount from the Bank and distributing the same amongst the members of the Society has been produced on record. PW-8 Rambhai has categorically deposed that it is the duty of the Chairman to bring the amount from the Bank and that the amount was also being distributed by the Chairman Sanabhai Nathabhai. The prosecution has also examined PW-4 Sanabhai Nathabhai at Exh. 23. He was the Chairman of the Society at the relevant time. He deposed that the

respondent was the Secretary of the Society and used to bring money from the Bank. The accused also uses to write the books of account of the Society. He has further stated in his evidence that at the time of audit there was misappropriation to the tune of Rs. 32,000/=. He did not know if at the time of handing-over the charge for the Secretary by the respondent, the respondent had handed over the balance amount of cash to his successor Shri Ghanshyambhai Patel. He said that he was not present at that time. In cross-examination PW-4 Sanabhai Nathabhai, Chairman of the Society admitted that he did not know as to what amount was noticed by the auditor as the amount of misappropriation. He did not examine the books of account of the Society. Thus, the evidence of the Chairman - Sanabhai Nathabhai is not helpful to the prosecution in establishing the guilt of the respondent.

7. Similarly, on going through the evidence of PW-3, Maganbhai Chottabhai Patel Exh. 19, who audited the books of account of the Society, it is clear that the statement Exh. 21 of the accused-person has not been found to be voluntary. PW-3 Maganbhai Chottabhai Patel admitted in his cross-examination that there were erasures and over-writing in the statement Exh. 21. Thus, having regard to the overall facts and evidence on record, the learned Magistrate was justified in recording the order of acquittal.

8. The law relating to acquittal appeal is clear inasmuch as when there are two views possible, the view in favour of the accused has got to be adopted. In view of the evidence on record, the prosecution has failed to establish the guilt of the accused beyond reasonable doubt.

9. In the result, the present appeal fails and the same is dismissed.

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